

1 SERGE WEINBERG

2 UNITED STATES DISTRICT COURT

3 FOR THE SOUTHERN DISTRICT OF NEW YORK

4 No. 15 Civ. 08725 (GBD)

5 -----x

6 UMB Bank, N.A., as Trustee,

7 Plaintiff

8 vs.

9 SANOFI,

10 Defendant

11 -----x

12 VIDEOTAPED DEPOSITION OF SERGE WEINBERG

13 Thursday, October 18, 2018 2:33 p.m.

14 Weil, Gotshal & Manges

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18
19 Reported by:

20 Janet Sambataro, RMR, CRR, CLR

21 JOB NO. 147615

1 SERGE WEINBERG

2 A. No.

3 Q. -- of his testimony?

4 A. Nothing.

5 Q. I'll represent to you, sir, that he
6 testified he personally was involved in the
7 negotiations of terms of the CVR agreement. I
8 take it that there is a distinction you and the
9 board were involved in structure, in pricing, but
10 you didn't get down into writing words?

11 A. Absolutely.

12 Q. Okay. Have you ever read the CVR
13 agreement cover to cover?

14 A. No. We were not informed by -- on the
15 detail of the agreement itself.

16 Q. Have you ever received a copy of it
17 that you put someplace?

18 A. No. I don't think so. I don't
19 remember that.

20 Q. Okay. Have you ever reviewed a summary
21 of the CVR agreement?

22 A. No. Just the financial structure of
23 it.

24 Q. Have you ever been informed as to what
25 Sanofi's obligations under the CVR agreement are?

1 SERGE WEINBERG

2 when the agreement was entered into?

3 MR. GILMAN: Yeah.

4 Q. Prior to your deposition prep.

5 A. As I told you, I was not informed about
6 the detail of the contract, the -- you know, the
7 legal terms or the definition of anything --

8 Q. Okay.

9 A. -- but the financial structure.

10 Q. Okay. And so I take it, then, that you
11 also were not informed that the CVR agreement
12 also required Sanofi to use diligent efforts to
13 achieve the approval milestone and the four
14 product milestones. You also did not know that?

15 A. Same answer, yeah.

[REDACTED]

1 SERGE WEINBERG

2 Q. Okay. So am I correct that neither you
3 nor the board oversaw the performance of the CVR
4 agreement; correct?

5 A. It's not our role. Yeah.

6 Q. Okay. And did you or the board
7 designate any individual or any group of
8 individuals to oversee the performance of the
9 obligations that Sanofi was undertaking in the
10 CVR agreement?

11 A. No. As a consequence of not knowing
12 the details of the contract, as mentioned
13 earlier, it was not our role to designate someone
14 to fulfill an obligation where we didn't know the
15 details. It was typically a management role to
16 put in place appropriate human resources in order
17 to execute that transaction.

18 Q. Did the board ever request periodic
19 reports from anyone as to the status of Sanofi's
20 performance of its obligations under the CVR
21 agreement?

22 A. No. For the same reason.

23 Q. Did you ever request separate status
24 reports?

25 A. No. What we all were looking at -- and

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2 A. As I mentioned earlier, there was no
3 specific knowledge of the contract. We knew
4 about the CVR, but Lemtrada was considered as a
5 product amongst others.

6 Q. And at no time -- am I correct that at
7 no time did the board of directors of Sanofi
8 treat Lemtrada any different than any other
9 product?

10 A. No time.

11 Q. So the contract, the CVR agreement
12 didn't create any special attention at the board
13 level?

14 MR. NEUWIRTH: Objection.

15 A. Not at all.

16 Q. It didn't create any special sense of
17 urgency or commitment at the board level?

18 A. There wasn't, on our view, any specific
19 problem on developing Lemtrada. We were not
20 aware of any difficulty in developing Lemtrada. I
21 mean budget-wise, budget-wise.

22 (Document Bates-stamped SAN-CVR

23 022150481 through -0491 marked Exhibit

24 625.)

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[illegible]

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The image consists entirely of a solid black field with no visible features, text, or patterns.

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2 It means our process usually, people take a
3 lot of precautions, and we have to go back
4 several times in order to get to where we need to
5 be. And this is something I've seen in all the
6 companies where I've been working. I've been a
7 CEO for 15 years of large public companies.
8 Every year, I have the same discussions.

9 I think there is no difference between what
10 happens in Sanofi in the budget process with what
11 happens in any other company of that size. So I
12 think you can't see anything here saying that
13 Lemtrada would be a specific target of cost
14 reductions.

15 The issue that is underlined here, Lemtrada
16 forecast assumptions for the U.S., is that when
17 there are launches, a company usually has been
18 pretty optimistic, and it's quite regularly that
19 we had to challenge the numbers in the launches.
20 And I must say that most of the launches -- in
21 most of the launches, we never achieved the
22 budget numbers that we were having. So, you
23 know, that scenario, of course, should be in any
24 case, and this was not specific to Lemtrada.

25 Q. And there were no exceptions made for

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2 Lemtrada. It was the same budget discussion.

3 A. It was a global discussion on MS. So,
4 you know, the -- Bill had all the opportunity to
5 adopt within the organization between Aubagio.
6 We were looking at MS as an -- as an entity.

7 Q. And am I correct that there was zero
8 discussion of the CVR agreement?

9 A. No discussion.

10 Q. There was zero discussion of the
11 obligations imposed on Sanofi under the CVR
12 agreement?

13 A. There was no discussion about this.

14 Q. Okay.

15 MR. GILMAN: Would you show the witness
16 Plaintiff's Exhibit 621, please. Thank you.

17 (Previously marked Exhibit 621
18 incorporated by reference.)

19 Q. Mr. Weinberg, the first page is an
20 e-mail from Mr. Underwood to Mr. Sibold, three
21 weeks after Mr. Viehbacher was fired and a couple
22 of weeks, I guess, after you were in Boston.

23 A. A year after.

24 Q. I'm sorry. You're absolutely right.
25 You're absolutely right. A year after, which is

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2 A. In the general way, probably. Yes.

3 Q. Okay. But you never read the contract
4 and you didn't know what the obligations were.
5 Let's go down to the ex comm.

6 A. Can you imagine the number of contracts
7 that a company the size --

8 MR. NEUWIRTH: He can, but he doesn't
9 care for the purposes of these questions. So we
10 can keep going and you can get the answers. You
11 know what they are.

12 MR. GILMAN: Please. Please.

13 Q. You said that management's responsible,
14 and that's the CEO and that's then the executive
15 committee, and then that's the business line
16 people in the MS group?

17 You, as CEO, had never read the contract,
18 and you've testified you didn't know what the
19 obligations were; correct?

20 A. Correct.

21 Q. You're on the executive committee. Did
22 the executive committee ever, to your knowledge,
23 review Sanofi's obligations under the CVR
24 agreement?

25 A. I have no clues about this, because in